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Supreme Court of the United States

OCTOBER TERM, 1944

No. 811

LEO M. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

v.

STATE OF FLORIDA EX REL. J. TOM WATSON, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF IN SUPPORT THEREOF

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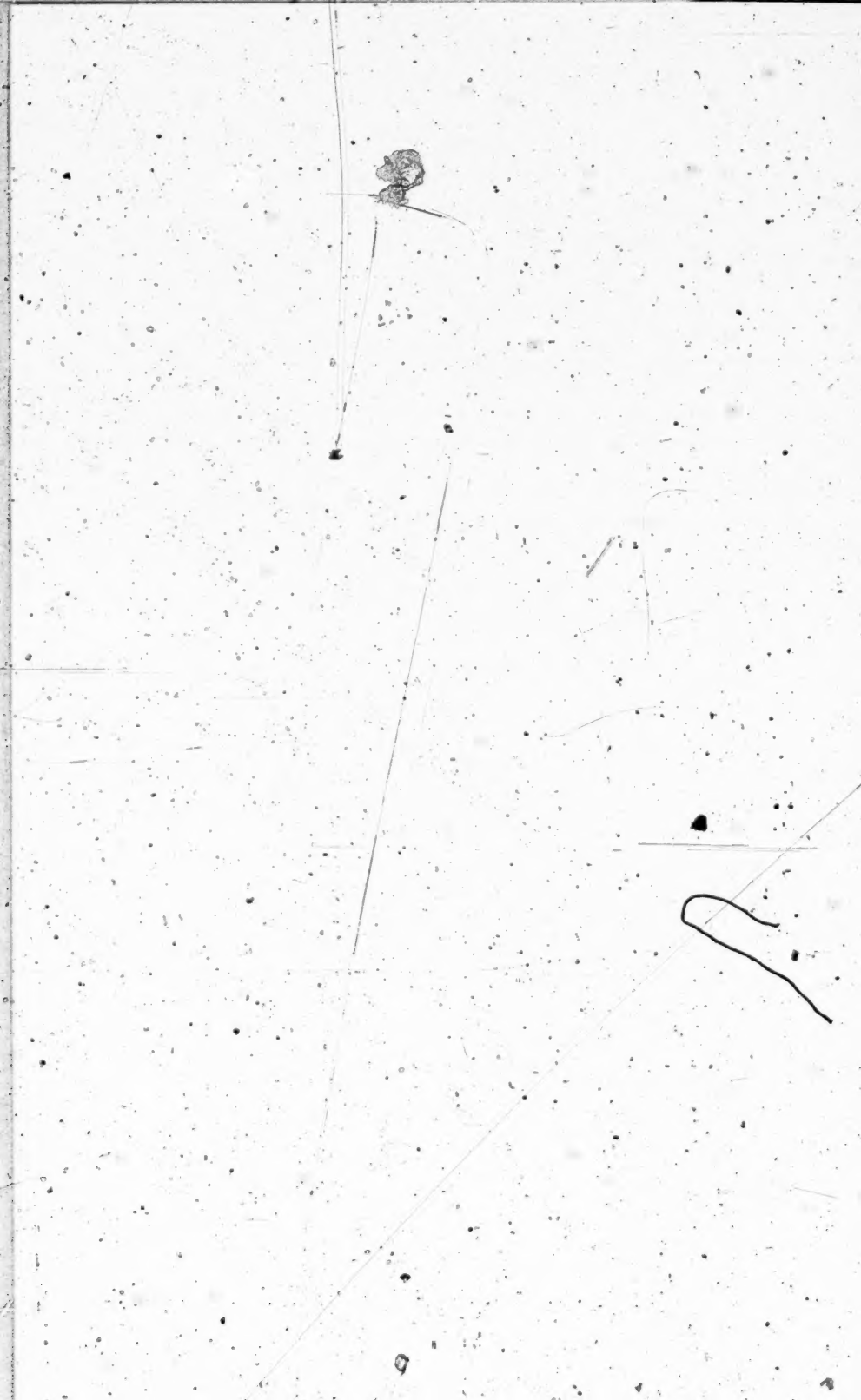
Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court.

The undersigned as counsel for the American Civil Liberties Union, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae*. The consent of the attorney for the petitioners to the filing of this brief has been obtained. Counsel for respondent has refused to grant his consent. Special reasons in support of this motion are set out in the accompanying brief.

March 26, 1945.

ARTHUR GARFIELD HAYS,
Counsel for American Civil Liberties Union, Amicus Curiae.



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BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

Statement

The American Civil Liberties Union is a national organization devoted to the protection of civil liberties in general and of the Federal and several State Bill of Rights in particular. It has members who reside in and are citizens of the various States, including the State of Florida. The organization endeavors to defend civil liberties from the viewpoint of the general public. It does not express the views of any particular group of class, political, economic, social or religious. It has come to the aid

of employers as well as of labor when it thought that the civil liberties of either were being threatened. The American Civil Liberties Union was founded upon the principle that where the civil liberties of one group or even of one person are threatened, the freedom of all is endangered. It has also been motivated in its activities by the principle expressed by this Court in the recent case of *Thomas v. Collins* (decided January 8, 1945; Docket No. 14) as follows:

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty."

It is with this larger view that we are concerned. We therefore ask leave to file this brief as *amicus curiae* because we believe that Sections 2 (2), 4 and 6 of the Florida statute (Chap. 21968, Laws of Florida, Acts of 1943, generally referred to as H. B. 142), here under review, violate the constitutional guarantees of freedom of speech, press, assembly and petition, and those against deprivation of liberty without due process of law.

In joining with the petitioners herein in attacking the Florida statute, we do not assert that labor unions are above the law. On the contrary, we agree with the statement of this Court in *Thomas v. Collins, supra:*

> "That the State has power to regulate labor unions with a view to protecting the public interest,

is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation. Such regulation, however, whether aimed at fraud or other abuses, must not trespass upon domains set apart for free speech and free assembly."

But we submit that a regulatory statute must be directed toward an evil and designed to correct it. Such, we maintain, is not the purpose or effect of the Florida law now under review.

The vice of the statute here and of similar attempts at legislative control over the internal affairs of labor unions is that they weaken the autonomy and independence of the unions, and in so doing they threaten to destroy a most important democratic force in American life.

I

Section 4 violates the Fourteenth Amendment by imposing a previous general restraint on the civil rights of speech, press and assembly.

Section 4 of the Act requires all paid union representatives to obtain a license from the State of Florida as a condition (as stated in Section 2) of acting or attempting to act for any labor organization in "(a) the issuance of membership cards, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 4 also sets up qualifications for such paid union representatives and creates a board to pass upon applications and to issue such licenses.

The Florida Supreme Court upheld the constitutionality of the statute on the theory that labor unions are business organizations operating for profit, differing essentially from "religious bodies, chambers of commerce and like institutions", and that hence they are subject to the police power.

The American Civil Liberties Union rejects the view that labor unions should be treated as business organizations operating for profit. While unions have certain business aspects their most important function is a social one: to obtain for working men and women higher and better standards of life and in stabilizing industrial relations. The importance of unions in this capacity was recognized by Congress when it enacted the National Labor Relations Act, and has often been referred to by this Court. See, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548.

In the *Thomas* case, *supra*, this Court indicated that a line might be drawn between the public aspects of a labor union which could not be restricted and its commercial aspects which might be regulated by the state. There the Court was concerned with solicitation: it said that solicitation of members could not be the subject of license requirements, that solicitation of funds could be. If we assume the latter statement to represent the considered judgment of the Court, let us see how the distinction can be applied here.

We shall first look at the reason for the distinction. Solicitation of membership was held immune because it constituted a form of free speech. It was impossible, said the Court, to discuss the value of unions without suggest-

ing the desirability of joining them. Free speech and solicitation of membership thus merge imperceptibly. On the other hand the collection of dues is purely a business enterprise.

In the case at bar there is no question concerning the collection of dues or the solicitation of funds. The Florida law is not expressly concerned with these activities of unions. The activities described in the definition of "business agent", contained in Section 2 (2) make no reference to money, except with regard to the compensation of the "agent." If he is a volunteer he need not be licensed; if he receives any financial consideration whatever, he must be. The activities which form the criterion are the issuance of membership cards or other evidences of rights granted by the organization and the soliciting or receiving of privileges from the employer.

The first criterion is, we submit, a restriction on the right of free speech, since it is a serious curb on the right to solicit members held protected in the *Thomas* case. If this provision of law is valid then a paid organizer may address a group of workers and urge them to join his union, but when they come up to him to indicate their assent he may not sign them up, unless he be licensed. It is a restriction likewise on freedom of assembly because it limits the effectiveness of association.

The second criterion is also a serious restriction on freedom of assembly. For it is of the essence of an association of workers that they should seek to obtain redress of grievances, in the words of the statute to get a "right or privilege for employees" from an employer. Experience has demonstrated the desirability of entrusting this job to a paid employee of the union, rather than to a person subject to the discipline of the employer. The

statute conditions the exercise of this essential attribute of the association upon obtaining a license.

If it be argued that labor unions are capable of abuses which require regulation the plain answer is that this statute does not regulate any such abuses. Surely no one contends that an abuse has arisen because persons not authorized by the union issue membership cards or obtain privileges from employers. Yet, absent such abuse, what is the purpose of requiring that the applicant submit a statement from the president and the secretary of the union showing his authority to act? The truth of the matter is that this is a statute designed to interfere with the functioning of labor unions. That is evident from the requirement that no license can be issued at all during a thirty day period. This means that any expansion by a union would be blocked for that period at least—and might well be blocked much longer pending action by the board on the application, action which might be prolonged because of the requirement of the statute that the applicant be of good moral character. It should be noted, moreover, that applicants must not only be American citizens* but that the statutory naturalization period has here been doubled.

We submit that no license can be imposed on the basic activities here sought to be restricted. Such is the intent of the decisions of this Court ever since *Lovell* v. *Griffin*, 303 U. S. 444. See also *Hague* v. *C.I.O.*, 307 U. S. 496; *Schneider* v. *Irvington*, 308 U. S. 146; *Thornhill* v. *Alabama*, 310 U. S. 88; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *City of Struthers*, 319 U. S. 141; *Follett* v. *McCormick*, 321 U. S. 573.

* This restriction is invalid *Truax* v. *Raich*, 239 U. S. 33.

It is clear also from these cases that the regulations cannot be supported merely because limited to those who are paid for what they do. As Mr. Justice Douglas said in the *Follett* case:

> "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living." *Follett* v. *Town of McCormick*, 321 U. S. 573.

The right to require a license depends on the character of the thing to be licensed, not on whether the person to be licensed is a paid worker or a volunteer. The state may license commercial activity, it cannot license activity which involves freedom of speech, religion or assembly. What Florida has attempted by Sections 2 (2) and 4 is to license activities that are constitutionally protected. This it may not do.

II

Section 6 likewise violates the Fourteenth Amendment by imposing a previous general restraint on the civil rights of speech, press and assembly.

Section 6 requires every labor organization operating in the State to file an annual report with the Secretary of State stating its name, its location, the names and addresses of its officials, and to pay an annual fee. The injunction issued by the State courts in the case at bar prohibits the union petitioner from *functioning* as a labor organization with Florida unless it files such a report and pays the required fee. As so interpreted, Section 6 constitutes a licensing provision, requiring a union to obtain

a license as a condition of carrying on its normal and legitimate activities. *International Text Book Company* v. *Pigg*, 217 U. S. 91, 108. The requirement of the payment of an annual fee with the filing of the report similarly constitutes a license fee upon the right of labor organizations to function within the State of Florida. *Murdock* v. *Pennsylvania*, 319 U. S. 105.

As already indicated in our discussion of Section 4, above, the rights of free speech, press and assembly may not be subject to a prior license or grant of permission. That the license fee here involved is only nominal does not save the licensing requirement from invalidity. *Grosjean* v. *American Press Company, supra; Thornhill* v. *Alabama, supra; Lovell* v. *Griffin, supra; Murdock* v. *Pennsylvania, supra.*

The various activities of a labor union which constitute the functioning of such an organization, and which Section 6 would prohibit unless the required reports were filed and the fees paid, are all within the area of rights protected by the Fourteenth Amendment against infringement by any State.

The very essence of a labor organization is the assemblage of working men and women into one association for their mutual protection. The right of employees thus to form themselves into labor unions has been recognized by this Court as "a fundamental right." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra.* See also *American Steel Foundries* v. *Tri-City Central Trades Council, supra; Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks, supra.*

An essential part of the functioning of a labor union is the holding of meetings. During an organizational drive, a union invites non-union employees to meetings to

explain to them the advantages of union membership. After employees have joined a union, they meet to discuss their common problems, to exchange information and views concerning such problems, to agree upon common action to solve their problems and generally to obtain improvements in their wages, hours and other conditions of employment. The right to hold such meetings is protected by the Constitution and may not be abridged or denied. *DeJonge* v. *Oregon*, 299 U. S. 353.

The process of collective bargaining and the making of collective agreements with employers are important functions of labor unions and are also fundamental rights. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra; Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks, supra; Virginian Railway Co.* v. *System Federation*, 300 U. S. 515.

When the collective bargaining process breaks down or an impasse is reached in negotiations, a union may have to resort to a strike and to picketing. These have likewise been recognized as constitutional rights by this Court. *Thornhill* v. *Alabama, supra; American Federation of Labor* v. *Swing*, 312 U. S. 321; *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478.

A functioning labor organization also constantly employs the printed word to spread its views. It publishes periodicals and leaflets for distribution to its own members, to non-union employees whom it is seeking to organize, and to the public generally. A State may not abridge this freedom. *Schneider* v. *Irvington, supra.*

Thus it is clear that by imposing a previous general restraint upon the functioning of labor organizations, Section 6 denies to members of such organizations their civil rights in violation of the Fourteenth Amendment.

Thomas v. *Collins*, *supra*, and *American Federation of Labor* v. *Reilly*, —— P. 2d —— (Colo.), are the two most recent judicial pronouncements on the general issue presented on this appeal.

In striking down the Texas statute requiring all labor union organizers to register and obtain an organizer's card, this Court said in the *Thomas* case:

> "The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly."

The Colorado statute involved in *American Federation of Labor* v. *Reilly*, *supra*, required all labor unions operating in that State to incorporate, and declared violations to be misdemeanors punishable by fine. The Colorado Supreme Court quoted with approval from the opinion of the trial court in that case, which held those provisions to be

> "• • • unconstitutional and inoperative and unenforceable for the reason that the same do require the prerequisite of incorporation for labor unions which, under its wording and provisions, does operate as a complete general previous restraint upon the exercise of the rights of free speech, free press and assembly, thus violating, in the opinion of the Court, the Due Process Clause of the Fourteenth Amendment of the Federal Constitution considered in conjunction with the First Amendment • • • "

In a well reasoned opinion citing numerous decisions by this Court and by various State Courts, the Colorado Supreme Court held that "the conclusions of the trial court were sound and that its judgment as to the points in consideration must be affirmed."

In practical operation and effect the restraint imposed by the filing requirements of Section 6 of the Florida statute is of the same character as that imposed by the requirement for incorporation under the Colorado statute.

Under the authorities cited and discussed above, it is evident that Section 6 violates the Fourteenth Amendment.

III

Section 2 (2), upon which Section 4 is dependent, violates the "due process" clause of the Fourteenth Amendment because of its vagueness.

The licensing provisions of Section 4 are applicable to a "business agent", which term is defined in Section 2 (2) as

> "any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege from employees."

Since under Section 14 any person violating any provision of the Act is guilty of a misdemeanor and punishable by fine, imprisonment, or both, we respectfully submit that Section 4 contravenes the Fourteenth Amendment. It is well settled by decisions of this Court that a criminal statute which is so vague, indefinite or uncertain that its application or meaning are not reasonably ascertainable does not fulfill the requirements of

due process under the Fifth and Fourteenth Amendments. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *Herndon* v. *Lowry*, 301 U. S. 242; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

In the *Lanzetta* case, this Court said (at page 453):

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids . . .
>
> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play, and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Judged by this standard, can it be asserted that the meaning of the words "pecuniary or financial consideration" is free of doubt? Does a worker who is a member of a grievance committee in a plant become a "business agent" under this definition because he is reimbursed by the union for the time lost by him from his work while acting as such committee member? Does the definition cover an attorney who is paid a fee by a union for assisting in the negotiation of a collective agreement or in the settlement of a labor dispute with an employer, so as to require the attorney to obtain a license under the Act?

What is meant by "authorization cards" and "work permit"? What constitutes "evidence of rights granted

or claimed in, or by, a labor organization"? Do these words cover a collective agreement? And if so, does an attorney for a union need a license before he may draw up such an agreement for his client? What is meant by the "issuance" of such evidence of rights? What constitutes "receiving from an employer any right or privilege for employees"? Would that include the acts of an attorney who, by instituting an action under Section 16 (b) of the Fair Labor Standards Act, collects overtime pay from an employer on behalf of employees?

A statute which is so ambiguous cannot be sustained.

CONCLUSION

It is respectfully submitted that Sections 4 and 6 of Chapter 21968, Laws of Florida, Acts of 1943, are unconstitutional for the reasons set forth above.

Respectfully submitted.

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